

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TZUMI ELECTRONICS, LLC,
Plaintiff,

v.

THE BURLINGTON INSURANCE
COMPANY,
an Illinois Corporation,
Defendant.

Civil Action No.: 1:22-cv-09995-KPF

Hon. Katherine Polk Failla

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER**

MEMO ENDORSED

1 Plaintiff Tzumi Electronics, LLC. and Defendant The Burlington Insurance
 2 Company hereby stipulate to the entry of a Protective Order Governing the
 3 Designation and Handling of Confidential Materials (“Protective Order”).

4 The Parties wish to protect the privacy of third parties and the confidentiality of
 5 certain trade secrets, confidential or proprietary business information, and other
 6 sensitive financial information, while still providing for the discovery or exchange of
 7 such documentation to the extent necessary for this Litigation.

8 The Parties wish to ensure that they can obtain and pursue discovery and litigate
 9 this matter efficiently, with a minimum of delay and expense while preserving the
 10 confidentiality of such information.

11 **IT IS HEREBY STIPULATED AND AGREED** that the following shall
 12 govern the handling of confidential documents, written discovery responses,
 13 deposition transcripts, and other confidential material filed, produced, served,
 14 exchanged, used, or otherwise disclosed in the above captioned matter.

15 **GOOD CAUSE STATEMENT**

16 **A. Purposes and Limitations**

17 Discovery in this lawsuit (the “Action”) is likely to involve production of
 18 confidential, proprietary, or private information for which special protection from
 19 public disclosure and from use for any purpose other than prosecuting this litigation
 20 may be warranted. The parties have stipulated to and petition the Court to enter this
 21 Order. The parties acknowledge that this Protective Order does not confer blanket
 22 protections on all disclosures or responses to discovery and that the protection it
 23 affords from public disclosure and use extends only to the limited information or
 24 items that are entitled to confidential treatment under the applicable legal principles.
 25 The parties further acknowledge, as set forth in Section 2.5, below, that this Protective
 26 Order does not entitle them to file documents under seal; Judge Failla’s Individual
 27 Rule 9.C sets forth the procedures that must be followed and the standards that will be
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1 applied when a party seeks permission from the court to file material under seal.
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3 **1. DESIGNATION OF CONFIDENTIAL INFORMATION**

4 **1.1 Confidentiality Designations.** Information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under
6 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
7 Statement shall be referred to as “CONFIDENTIAL INFORMATION.”
8 CONFIDENTIAL INFORMATION may be designated as CONFIDENTIAL or as
9 CONFIDENTIAL — ATTORNEYS' EYES ONLY, as follows:

10 a. CONFIDENTIAL designation. A party or non-party may designate
11 material CONFIDENTIAL only if it deems that a reasonable basis exists for limiting
12 dissemination of the material under the standards of Rule 26 and that the material
13 contains confidential and/or proprietary commercial information that is not generally
14 available to the public

15 b. CONFIDENTIAL — ATTORNEYS' EYES ONLY designation. A
16 party or non-party may only designate material CONFIDENTIAL — ATTORNEYS'
17 EYES ONLY if it deems that disclosure of such material to another person or party
18 would be injurious to the commercial interests of the designating entity under the
19 standards of Rule 26 and that the material contains highly propriety technical or trade
20 secret or business information so that the risk of improper use or disclosure to another
21 party outweighs the right of that party to review such information.

22 **1.2 Produced Documents.** A party producing documents that it believes
23 constitute or contain CONFIDENTIAL INFORMATION shall produce copies bearing
24 a label designating such material CONFIDENTIAL or CONFIDENTIAL —
25 ATTORNEYS' EYES ONLY. As used herein, the term “documents” includes all
26 writings or other media on which information is recorded and other electronic files
27 and tangible things subject to production under the Federal Rules of Civil Procedure.
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1 **1.3 Interrogatory Answers.** If a party answering an interrogatory believes in
2 good faith under the criteria set forth in Section 1.1 that its answer contains
3 CONFIDENTIAL INFORMATION, such interrogatory response shall be served
4 bearing a label designating such interrogatory response CONFIDENTIAL or
5 CONFIDENTIAL—ATTORNEYS' EYES ONLY in the same manner as a produced
6 document under Section 1.2.

7 **1.4 Inspections of Documents.** In the event a party elects to produce files
8 and records for inspection and the requesting party elects to inspect them, no
9 designation of CONFIDENTIAL INFORMATION need be made in advance of the
10 inspection. For purposes of such inspection, all materials produced shall be considered
11 as CONFIDENTIAL INFORMATION unless the Parties agree otherwise. If the
12 inspecting party selects specified documents to be copied, such documents shall be
13 treated as CONFIDENTIAL INFORMATION until 10 days have elapsed from the
14 time the producing party is provided copies of the selected documents, during which
15 time the producing party may designate such documents as CONFIDENTIAL
16 INFORMATION in accordance with Section 1.1.

17 **1.5 Deposition Transcripts.** Portions of testimony taken at a deposition or
18 conference and any corresponding exhibits may be designated as CONFIDENTIAL or
19 CONFIDENTIAL -ATTORNEYS' EYES ONLY by making a statement to that effect
20 on the record at the deposition or other proceeding. Arrangements shall be made with
21 the court reporter transcribing such proceeding to separately bind such portions of the
22 transcript containing information designated as CONFIDENTIAL or
23 CONFIDENTIAL — ATTORNEYS' EYES ONLY and label such portions
24 appropriately. For convenience, if a deposition transcript contains repeated references
25 to CONFIDENTIAL INFORMATION which cannot conveniently be segregated from
26 non-CONFIDENTIAL INFORMATION, the entire transcript may be marked by the
27 reporter as CONFIDENTIAL or CONFIDENTIAL — ATTORNEYS' EYES ONLY.
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1 A party may also designate information disclosed at a deposition as CONFIDENTIAL
2 and/or CONFIDENTIAL — ATTORNEYS' EYES ONLY by notifying all parties in
3 writing, within thirty (30) days of receipt of the transcript, of the specific pages and
4 lines designated as such. Each party shall attach a copy of such written statement to
5 the face of each transcript in its possession, custody or control.

6 **1.6 Multi-page Documents.** A party may designate all pages of an
7 integrated, multi-page document, including a deposition transcript, interrogatory
8 answers and responses to document requests, as CONFIDENTIAL INFORMATION
9 by placing the label specified in Section 1.1 on the first page of the document. If a
10 party wishes to designate only certain portions of an integrated, multi-page document
11 as CONFIDENTIAL INFORMATION, it should designate such portions immediately
12 below the label on the first page of the document and place the label specified in
13 Section 1.1 on each page of the document containing CONFIDENTIAL
14 INFORMATION.

15 **1.7 Inadvertent Failures to Designate.** Inadvertent failure to designate
16 qualified information or items does not, standing alone, waive the right to secure
17 protection under this Protective Order for such material, provided that the designating
18 party promptly corrects the designation after discovery of such inadvertent failure.
19 Upon timely correction of a designation, the receiving party must make reasonable
20 efforts to assure that the material is treated in accordance with the provisions of this
21 Protective Order.

22 **2. HANDLING PRIOR TO TRIAL**

23 **2.1 Disclosure of CONFIDENTIAL Material.** Materials designated
24 CONFIDENTIAL or information derived therefrom may be disclosed, shown, or
25 made available, or communicated in any way only to the following persons:

26 a. The parties and employees of the parties, but only to the extent necessary
27 to participate in, assist in and monitor the progress of this Action and for no other
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1 purpose;

2 b. Court reporters taking testimony involving CONFIDENTIAL
3 INFORMATION, and necessary stenographic, videographic, and clerical personnel
4 thereof;

5 c. Consultants or experts and their staff who are employed for the purposes
6 of this litigation who have signed the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A);

8 d. The court and the court's staff;

9 e. The author, addressees and recipients of the documents or any person
10 who would have had access to such information by virtue of his/her employment;

11 f. Witnesses testifying in this litigation who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A), including preparation
13 for such testimony;

14 g. Any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 h. Attorneys for the parties to this litigation, including persons working
17 solely in secretarial, clerical, and paralegal capacities, and who are providing
18 assistance to counsel in this Action.

19 i. Third-parties specifically retained to assist outside counsel in copying,
20 imaging, and/or coding of documents but for that purpose only, provided that all such
21 confidential documents are kept and maintained in a secure place.

22 j. Any other person as to whom the parties previously agree in writing.

23 **2.2 Disclosure of CONFIDENTIAL — ATTORNEYS' EYES ONLY**
24 **Material.** Material or documents designated as CONFIDENTIAL — ATTORNEYS'
25 EYES ONLY may be shown to the persons listed in Sections 2.1 (b) through (j).

26 **2.3 Use of CONFIDENTIAL INFORMATION.** Individuals who are
27 authorized to review CONFIDENTIAL INFORMATION pursuant to this Protective
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1 Order shall hold the CONFIDENTIAL INFORMATION and its contents in
2 confidence and shall not divulge it, either verbally or in writing, except as expressly
3 permitted by this Protective Order, unless authorized to do so by a further order of this
4 Court or as specifically required by law.

5 **2.4 Unauthorized Disclosures.** In the event of disclosure of
6 CONFIDENTIAL INFORMATION other than as authorized in this Protective Order,
7 counsel for the party responsible for the disclosure shall (1) notify all parties of the
8 unauthorized disclosures, (2) make every effort to prevent further disclosure,
9 including retrieving disclosed materials and copies of such materials, and (3) request
10 that the persons to whom the unauthorized disclosure was made sign an
11 “Acknowledgment and Agreement to Be Bound” (Exhibit “A”) if they have not
12 already done so. Upon written stipulation or motion, in accordance with Federal Rule
13 of Civil Procedure 37, the Court may order such further and additional relief as it
14 deems necessary and just.

15 **2.5 Court Filings.** Any CONFIDENTIAL INFORMATION (or documents
16 containing CONFIDENTIAL INFORMATION) to be filed with the Court shall be
17 filed under seal pursuant to the procedures set forth in Judge Failla’s Individual Rule
18 9.C, or pursuant to such other procedures for filing under seal as the Court may order
19 or allow. The parties agree that exhibits provided to any jury empanelled in this
20 proceeding shall be provided without the CONFIDENTIAL or CONFIDENTIAL —
21 ATTORNEYS’ EYES ONLY stamp.

22 **2.6 Inadvertent Disclosure**

23 a. The inadvertent or unintentional disclosure of “Confidential” or
24 “Confidential-Attorneys’ Eyes Only” or any other privileged or protected item,
25 regardless of whether the item was so designated at the time of disclosure, shall not be
26 deemed a waiver in whole or in part of a Party’s claim of protection or privilege either
27 as to the specific information disclosed therein or on the same or related subject
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1 matter.

2 b. This Protective Order is without prejudice to any Party's right to assert
3 the attorney-client, work product, or other privileges or doctrines, or to any other
4 Party's right to contest such claims. By making information designated as
5 "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY"
6 available to the other Party, the producing Party does not waive any confidentiality
7 privilege, doctrine or treatment, and the receiving Party acknowledges and agrees that,
8 by making such materials available, the producing Party has not waived any such
9 confidentiality privilege, doctrine or treatment or disclosed any proprietary or
10 confidential information, trade secret, or any other business or confidentiality
11 privilege, doctrine or treatment. By receiving information designated as
12 "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY" the
13 receiving Party does not acknowledge or agree that such materials are entitled to such
14 designation, and does not waive the right to contest such designation by way of
15 application to the Court.

16 c. Pursuant to Fed. R. Evid. 502(b), the production by any Party during
17 discovery of documents containing information protected by the attorney-client
18 privilege or the attorney work-product doctrine shall be conclusively deemed
19 inadvertent and shall under no circumstances operate to waive the protections of the
20 privilege or the doctrine by or as to the producing Party, provided that as soon as
21 reasonably practicable after the producing Party's learning of the production or the
22 receiving Party's notification to the producing Party of its receipt of the documents
23 that may be subject to the attorney-client privilege or the work product doctrine, the
24 producing Party has requested the return of the documents. Upon receipt of a request,
25 the receiving Party shall immediately return such documents to the producing Party,
26 shall not retain any copies, and shall not use the information or the fact of inadvertent
27 disclosure in any manner in this Litigation.

1 d. The Receiving Party shall promptly destroy, sequester, or return to the
2 Disclosing Party any protected or privileged item discovered by the Disclosing Party
3 or the Receiving Party to have been disclosed inadvertently. If the Receiving Party
4 disclosed the protected or privileged item before being notified of the Disclosing
5 Party's claim of protection or privilege, it must take reasonable steps to retrieve the
6 item for destruction, sequestering, or return to the Disclosing Party.

7 No Party will be responsible to another Party for disclosure of CONFIDENTIAL
8 INFORMATION under this Protective Order if the information in question is not
9 labeled or otherwise identified as such in accordance with this Protective Order.

10 **3. HANDLING DURING TRIAL.** CONFIDENTIAL INFORMATION which is
11 subject to this Protective Order may be marked and used as trial exhibits by either
12 party, subject to terms and conditions as imposed by the trial court upon application
13 by the designating party. In the event that information designated as
14 CONFIDENTIAL INFORMATION is contemplated to be used at trial, the Receiving
15 Party seeking to use such information shall give notice to the Court and the Disclosing
16 Party of its intention to use the CONFIDENTIAL INFORMATION at trial
17 sufficiently in advance of its contemplated use so that the Court can have the matter
18 heard.

19 **4. HANDLING AFTER FINAL DISPOSITION.**

20 a. This Protective Order shall survive the final termination of this Action
21 and shall protect all retained materials that have remained confidential through final
22 termination of the case. Upon final termination of this case, all CONFIDENTIAL
23 INFORMATION produced in this litigation, including all copies made of such
24 material shall, upon demand by the Party that produced it, be returned to counsel for
25 that Party that produced it. If no request for return is received within 30 days of final
26 disposition, the Party in possession shall destroy such CONFIDENTIAL
27 INFORMATION. The Court and Court personnel are exempt from the provisions of
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1 this Section.

2 b. Notwithstanding the foregoing, counsel for each Party may retain all
3 pleadings, briefs, memoranda, motions, and other documents filed with the Court that
4 refer to or incorporate CONFIDENTIAL INFORMATION, and will continue to be
5 bound by this Protective Order with respect to all such retained information. Further,
6 attorney work product materials that contain CONFIDENTIAL INFORMATION
7 need not be destroyed, but, if they are not destroyed, the person in possession of the
8 attorney work product will continue to be bound by this Protective Order with respect
9 to all such retained information.

10 **5. RESTRICTIONS.** Nothing herein shall impose any restriction on the use or
11 disclosure by a party of material: (1) obtained lawfully by a party hereto other than
12 through discovery in this Action, from a person who, to the best of such party's
13 knowledge, was not at the time such materials were obtained by such party under a
14 duty (contractual or otherwise) to maintain such materials in confidence; (2) that is
15 public knowledge or became public knowledge after disclosure under this Protective
16 Order (other than through an act or omission of a person receiving material under this
17 Protective Order).

18 **6. OTHER REQUESTS.** This Protective Order shall be without prejudice to the
19 right of any party: (i) to request re-designation of material as CONFIDENTIAL,
20 CONFIDENTIAL — ATTORNEYS EYES ONLY, or neither; (ii) upon written,
21 stipulation, in accordance with Local Rule 37.2, to request the Court's ruling on
22 whether a document or information is CONFIDENTIAL, CONFIDENTIAL —
23 ATTORNEYS' EYES ONLY Material, or whether its use should be restricted; (iii) to
24 present a motion to the Court under F.R.Civ.P. 26 (c) for a separate protective order as
25 to any document or information, including restrictions differing from those specified
26 herein. Any challenge to a confidentiality designation shall be initiated pursuant to
27 Local Rule 37.2 and Rule 3(c) of Judge Failla's Individual Rules Of Practice In Civil
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Cases. The burden of persuasion in any such challenge shall be on the party who designated the material as CONFIDENTIAL or CONFIDENTIAL — ATTORNEYS' EYES ONLY. The Protective Order shall not be deemed to prejudice the parties in any way in any future application for modification of this Protective Order.

The terms of this Protective Order are applicable to information produced by a non-party in this Action and designated as CONFIDENTIAL or CONFIDENTIAL — ATTORNEYS' EYES ONLY. Such information produced by non-parties in connection with this Action is protected by the remedies and relief provided by this Protective Order. Nothing in these provisions should be construed as prohibiting a non-party from seeking additional protections.

7. CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as CONFIDENTIAL or CONFIDENTIAL — ATTORNEYS' EYES ONLY that party must:

a. promptly notify in writing the designating party. Such notification shall include a copy of the subpoena or court order;

b. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

c. cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose CONFIDENTIAL INFORMATION may be affected.

If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any information designated in this action as CONFIDENTIAL or CONFIDENTIAL — ATTORNEYS' EYES ONLY before a determination by the court from which the subpoena or order issued, unless

1 the party has obtained the designating party's permission. The designating party shall
2 bear the burden and expense of seeking protection in that court of its
3 CONFIDENTIAL INFORMATION and nothing in these provisions should be
4 construed as authorizing or encouraging any party in this Action to disobey a lawful
5 directive from another court.

6 **8. CUSTODY.** Recipients of material under this Protective Order shall maintain
7 such material secured and shall exercise the same standard of care with respect to
8 storage, custody, use and dissemination of the material as they exercise for their own
9 proprietary information, but in no event shall the standard be less than that of a
10 reasonable person.

11 **9. ACKNOWLEDGMENT OF ORDER.** Each person required by this
12 Protective Order to sign a statement agreeing to be bound by this Protective Order
13 must sign a statement to be delivered to and maintained by the Disclosing Party in the
14 form attached hereto as EXHIBIT A.

15 **10. AGREEMENT OF PARTIES TO ORDER.**

16 All Parties to this action, their counsel, and all other persons subject to this
17 Protective Order shall be bound by this Protective Order and shall abide by all of the
18 terms of this Protective Order until otherwise ordered by the court or by written notice
19 releasing them from the respective obligations received from the pertinent Disclosing
20 Party.

21 **11. CONTINUING EFFECT OF ORDER.**

22 This Protective Order shall continue to be binding after the conclusion of this
23 litigation except that a Party may seek the written permission of the Disclosing Party
24 or further order of the Court with respect to dissolution or modification of this
25 Protective Order. The Court shall retain jurisdiction to resolve any dispute concerning
26 the use of information disclosed pursuant to this Protective Order, and to enforce or
27 modify this Protective Order.

1 **12. ADDITIONAL RELIEF.**

2 a. No Party is prevented from seeking relief not provided by this Protective
3 Order, or otherwise seeking court approval as may be appropriate to protect its
4 interests or otherwise prepare this matter for trial.

5
6 Dated: March 21, 2023

ADRIAN & ASSOCIATES, LLC

7 By: /s/ James M. Adrian
8 James M. Adrian
9 Attorney for Defendant
10 THE BURLINGTON INSURANCE
COMPANY.

11 Dated: March 21, 2023

GAUNTLETT & ASSOCIATES

12 By: /s/ James A. Lowe
13 David A. Gauntlett
14 James A. Lowe
15 Attorneys for Plaintiff
16 TZUMI ELECTRONICS, LLC.
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This confidentiality agreement does not bind the Court or any of its personnel. The Court can modify this stipulation at any time. The Court will retain jurisdiction over the terms and conditions of this agreement only for the pendency of this litigation. Any party wishing to make redacted or sealed submissions shall comply with Rule 9 of this Court's Individual Rules of Civil Procedure.

Dated: March 21, 2023
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare
 under penalty of perjury that I have read in its entirety and understand the Protective
 Order that was issued by the United States District Court for the Southern District of
 New York on [_____, 2023] regarding discovery in this lawsuit,
TZUMI ELECTRONICS, LLC, v. THE BURLINGTON INSURANCE COMPANY,
 Civil Action No. 1:22-cv-09995-KPF (the “Protective Order”). I agree to comply with
 and to be bound by all the terms of the Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to the Protective Order to any person or entity
 except in strict compliance with the provisions of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Southern District of New York for the purpose of enforcing the terms of the
 Protective Order, even if such enforcement proceedings occur after termination of this
 action.

Date:

City and State where sworn and signed:

Printed name:

Signature: